



ADVISORY

(REGULATION CHANGES)

Number 13

October 20, 1986

AB 1276 - Increasing Maximum Penalties

Attached is a copy of Assembly Bill (AB) 1276 which was signed into law on September 30, 1986. AB 1276 amends Sections 42400, 42401, 42402 and 42403 of the Health and Safety Code and adds Sections 42400.1, 42400.2, 42402.1, 42402.2 and 42405.5. These additions and amendments in many cases substantially increase the potential penalties for violations of nonvehicular air pollution laws, regulations, and orders. AB 1276 becomes effective January 1, 1987 and will apply to any violations which occur on or after that date.

Under the new law, any person who negligently emits an air pollutant in violation of a statute in Part 4 ("Nonvehicular Air Pollution Control") of Division 26 of the Health and Safety Code, or in violation of a district regulation or order limiting emissions, will be liable for civil penalties of up to \$10,000 per day, or a criminal fine of up to \$10,000 per day, and up to nine months in jail. These penalties will also apply to any person who owns or operates a source which is in violation of Section 41700 (nuisance) and which causes actual injury to the health or safety of a considerable number of persons.

Any person who emits an air pollutant in violation of Part 4 or any district regulation limiting emissions and who knew of the emissions and failed to take corrective action within a reasonable period of time under the circumstances will be liable for a civil penalty of up to \$25,000 per day, or a criminal fine of up to \$25,000 per day and up to one year in jail. "Corrective action" means termination of the emission violation, grant of a variance, or compliance with an applicable upset/breakdown regulation. These penalties also apply to any person who knowingly and with intent to deceive falsifies any document required to be kept under Part 4 or an ARB or district regulation or order. Additionally, the penalties apply to any person who owns or operates a source in violation of Section 41700 where the source causes actual injury to the health or safety of a considerable number of persons and where the person knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances.

The existing civil penalties of up to \$1,000 per day and criminal penalties of a fine up to \$1,000 per day and up to six months in jail will continue to apply to those violations not subject to the more serious penalties described above. The civil penalty for violating an order of abatement will be increased from up to \$6,000 per day to up to \$25,000 per day.

Staff of the Air Resource Board believe that meaningful fines are the best incentive for voluntary compliance. District staff are encouraged to seek penalties in excess of \$1,000 per day in accordance with this new penalty schedule in cases where it is appropriate.

If you have any questions regarding this bill, please call the Air Resources Board Compliance Division at (800) 952-5588.

Attachment

cc: James J. Morgester, Chief
Compliance Division
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

02302

Assembly Bill No. 1276

CHAPTER 1453

An act to amend Sections 42400, 42401, 42402, and 42403 of, and to add Sections 42400.1, 42400.2, 42402.1, 42402.2, and 42405.5 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 30, 1986. Filed with Secretary of State September 30, 1986.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1276, Campbell. Air pollution: penalties.

(1) Under existing law, any person who violates any statutory provision relating to nonvehicular air pollution control or any order, rule, or regulation of the State Air Resources Board or of an air pollution control district or air quality management district relating to nonvehicular air pollution control is guilty of a misdemeanor and subject to a fine not to exceed \$1,000, or imprisonment in the county jail for not more than 6 months, or both, for each violation.

This bill would provide a fine of not more than \$10,000 or imprisonment in the county jail for not more than 9 months, or both, for certain types of violations. The bill would make specified violations pertaining to emission regulations or limitations and falsification of documents subject to a fine of not more than \$25,000 or imprisonment in the county jail for not more than one year, or both.

(2) Under existing law, any person who intentionally or negligently violates specified orders of abatement issued by a district, a district hearing board, or the state board is liable for a civil penalty not to exceed \$6,000 for each day in which the violation occurs.

This bill would increase the maximum amount of the civil penalty to not more than \$25,000 for each day in which the violation occurs.

(3) Under existing law, any person who violates specified statutory provisions relating to the discharge of air contaminants, who violates specified orders of the Great Basin Air Pollution Control District, or who violates any rule or regulation of a district or the state board relating to nonvehicular air pollution control is liable for a civil penalty not to exceed \$1,000 for each day in which the violation occurs.

This bill would impose a civil penalty of not more than \$10,000 per day for specified nonvehicular air contaminant violations and a civil penalty of not more than \$25,000 per day for specified violations pertaining to emission regulations or limitations and falsification of documents, and would provide for the assessment, recovery, and apportionment of these civil penalties, as specified.

It would require a state or local agency providing assistance to the board or a district in recovery of civil penalties to be

reimbursed for the costs thereof, as specified.

The bill would preclude prosecution under any of the above provisions if civil penalties are recovered under other provisions of law for the same offense and the filing of a criminal complaint would be grounds for dismissal of a civil action for the same offense. The bill would define "corrective action" and "actual injury" for specified purposes.

(4) Since the bill would create new crimes, it would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. Section 42400 of the Health and Safety Code is amended to read:

42400. (a) Except as otherwise provided in Section 42400.1 or 42400.2, any person who violates any provision of this part, or any order, permit, rule, or regulation of the state board or of a district, including a district hearing board, adopted pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is guilty of a misdemeanor and is subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment in the county jail for not more than six months, or both.

(b) If a violation under subdivision (a) with regard to the failure to operate a vapor recovery system on a gasoline cargo tank is directly caused by the actions of an employee under the supervision of, or of any independent contractor working for, any person subject to this part, the employee or independent contractor, as the case may be, causing the violation is guilty of a misdemeanor and is punishable as provided in subdivision (a). That liability shall not extend to the person employing the employee or retaining the independent contractor, unless that person is separately guilty of any action violating any provision of this part.

(c) The recovery of civil penalties pursuant to Section 42402, 42402.1, or 42402.2, precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(d) Each day during any portion of which a violation of subdivision (a) occurs is a separate offense.

SEC. 2. Section 42400.1 is added to the Health and Safety Code,

to read:

42400.1. (a) Any person who negligently emits an air contaminant in violation of any provision of this part or any rule, regulation, or order of the state board or of a district pertaining to emission regulations or limitations is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than nine months, or both.

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury, as defined in subdivision (c) of Section 42400.2, to the health or safety of a considerable number of persons or the public is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(c) Each day during any portion of which a violation occurs is a separate offense.

(d) The recovery of civil penalties pursuant to Section 42402, 42402.1, or 42402.2, precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

SEC. 3. Section 42400.2 is added to the Health and Safety Code, to read:

42400.2. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, or regulation of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is subject to a fine of not more than twenty-five thousand dollars (\$25,000) or imprisonment in the county jail for not more than one year, or both.

For purposes of this section, "corrective action" means the termination of the emission violation or the grant of a variance from the applicable order, rule, or regulation pursuant to Article 2 (commencing with Section 42350). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action.

(b) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, or order of the state board or of a district, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury to the health or safety of a considerable number of persons or the public, and who knew of the emission and failed to take corrective

action, as defined in subdivision (a), within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is punishable as provided in subdivision (a).

As used in this subdivision, "actual injury" means any physical injury which, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.

(d) Each day during any portion of which a violation occurs constitutes a separate offense.

(e) The recovery of civil penalties pursuant to Section 42402, 42402.1, or 42402.2, precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

SEC. 4. Section 42401 of the Health and Safety Code is amended to read:

42401. Any person who intentionally or negligently violates any order of abatement issued by a district pursuant to Section 42450, by a hearing board pursuant to Section 42451, or by the state board pursuant to Section 41505 is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

SEC. 5. Section 42402 of the Health and Safety Code is amended to read:

42402. (a) Except as otherwise provided in Section 42402.1 or 42402.2, any person who violates any provision of this part, or any order issued pursuant to Section 42316, or any order, permit, rule, or regulation of a district, including a district hearing board, or of the state board issued pursuant to Part 1 (commencing with Section 39000) to Part 4 (commencing with Section 41500), inclusive, is liable for a civil penalty of not more than one thousand dollars (\$1,000).

(b) There is no liability under subdivision (a) if the person accused of the violation alleges by affirmative defense and establishes that the violation was caused by an act which was not the result of intentional or negligent conduct.

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 6. Section 42402.1 is added to the Health and Safety Code, to read:

42402.1. (a) Any person who negligently emits an air contaminant in violation of this part or any rule, regulation, or order of the state board or of a district pertaining to emission regulations or limitations is liable for a civil penalty of not more than ten thousand dollars (\$10,000).

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury, as defined in subdivision (c) of Section 42400.2, to the health or safety

of a considerable number of persons or the public is liable for a civil penalty as provided in subdivision (a).

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 7. Section 42402.2 is added to the Health and Safety Code, to read:

42402.2. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, or regulation of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is liable for a civil penalty, of not more than twenty-five thousand dollars (\$25,000).

For purposes of this section, "corrective action" means the termination of the emission violation or the grant of a variance from the applicable order, rule, or regulation pursuant to Article 2 (commencing with Section 42350). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action.

(b) Any person who, knowingly and with intent to deceive, falsifies any document required to be kept pursuant to any provision of this part, or any rule, regulation, or order of the state board or of a district, is subject to the same civil penalty as provided in subdivision (a).

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 which causes actual injury to the health or safety of a considerable number of persons or the public, and who knew of the emission and failed to take corrective action, as defined in subdivision (a), within a reasonable period of time under the circumstances, is subject to a civil penalty as provided in subdivision (a).

As used in this subdivision, "actual injury" means any physical injury which, in the opinion of a licensed physician and surgeon, requires medical treatment involving more than a physical examination.

(d) Each day during any portion of which a violation occurs is a separate offense.

SEC. 8. Section 42403 of the Health and Safety Code is amended to read:

42403. The civil penalties prescribed in Sections 42401, 42402, 42402.1, and 42402.2 shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, or by the attorney for any district in which the violation occurs in any court of competent jurisdiction.

In determining the amount assessed pursuant to Sections 42401,

42402, 42402.1, and 42402.2, the court shall take into consideration all relevant circumstances, including, but not limited to, the following:

- (a) The extent of harm caused by the violation.
- (b) The nature and persistence of the violation.
- (c) The length of time over which the violation occurs.
- (d) The frequency of past violations.
- (e) The record of maintenance.
- (f) The unproven or innovative nature of the control equipment.
- (g) Any action taken by the defendant to mitigate the violation.
- (h) The financial burden to the defendant.

SEC. 9. Section 42405.5 is added to the Health and Safety Code, to read:

42405.5. (a) If any state or local government agency provides assistance in the investigation, data collection, or monitoring, preparation, or prosecution of an action to recover civil penalties pursuant to Section 42401, 42402, 42402.1, or 42402.2, and that assistance is provided in coordination with the state board or a district prosecuting the action, that agency shall be reimbursed out of the proceeds of the penalty collected for its costs and expenses incurred in providing the assistance.

(b) If the penalty collected is insufficient to fully reimburse the state board or district for the costs and expenses incurred in preparing and prosecuting the case and another agency or agencies for the costs and expenses incurred in assisting in the case, the amount collected shall be prorated among the state board or district and the assisting agency or agencies, on the basis of costs and expenses incurred by each.

(c) This section does not apply where there is an express agreement between the state board or district and another agency or agencies regarding reimbursement for assistance services and expenses.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act and because this act creates new crimes.